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Filing date: **03/04/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212024
Party	Plaintiff Republic Technologies (NA), LLC
Correspondence Address	ANTHONY J MCSHANE NEAL GERBER & EISENBERG LLP 2 N LASALLE ST STE 2300 CHICAGO, IL 60602 UNITED STATES amcshane@ngelaw.com, jcohen@ngelaw.com, temmanuelson@ngelaw.com, lpalumbo@ngelaw.com, afraker@ngelaw.com, ECFDocket@ngelaw.com
Submission	Other Motions/Papers
Filer's Name	Antony J. McShane
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Signature	/Antony J. McShane/
Date	03/04/2016
Attachments	Opposers_Renewed_Motion_For_Judgment_In_Its_Favor.pdf(496067 bytes) Declaration_of_Andrew_S_Fraker.pdf(2859159 bytes) Affidavit_of_Jesus_Lopez.pdf(2375273 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.
85/551,808 for S.O.B.

Published in the Official Gazette
on July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

Opposition No. 91212024

**OPPOSER'S RENEWED MOTION
FOR JUDGMENT IN ITS FAVOR**

Applicant has refused to voluntarily provide its trial testimony in this proceeding. It has also refused to accept service of a subpoena for its trial testimony issued pursuant to Rule 45 of the Federal Rules of Civil Procedure. Further, it has rendered itself incapable of being served with the subpoena by registering a non-existent address with the California Secretary of State and by refusing to accept certified mail delivered to the P.O. Box supplied as its correspondence address in the instant application. Applicant has failed to communicate with its counsel regarding this proceeding for more than four months. Opposer, Republic Technologies (NA), LLC ("Republic") is unable to obtain Applicant's trial testimony or to otherwise proceed in this matter. Republic therefore hereby renews its motion for judgment pursuant to TBMP § 527.03 on the grounds that Applicant has lost interest, and apparently intends to take no further action, in this proceeding.

In support of its motion, Republic states the following:

1. As detailed in Republic's Motion for Judgment or in the Alternative to Suspend filed on November 24, 2015, Applicant's principal, Fran S. Brooks, twice scheduled international travel that made him unavailable to testify during Republic's testimony period, including on the date that he had agreed to testify.¹ Mr. Brooks also declined to offer any alternative dates for his trial testimony or to otherwise make himself available during the remainder of the Republic's testimony period. At the time, Applicant's counsel represented that Mr. Brooks failed to respond to communications for lengthy periods, which strongly suggested that Applicant had lost interest in this proceeding.

2. Under these circumstances, pursuant to TBMP § 527.03, Republic moved for judgment in its favor, or in the alternative, pursuant to 37 CFR § 2.117(c) and TBMP § 703.01(f)(2), to suspend this proceeding to enable it to subpoena Applicant's trial testimony. *See* Docket No. 33 at pp. 2-4.

3. On November 24, 2015, the Interlocutory Attorney in this proceeding granted Republic's motion to suspend as well-taken.² Accordingly, this matter was suspended to permit Republic to compel Applicant's trial testimony pursuant to a subpoena issued under Rule 45 of the Federal Rules of Civil Procedure. Since then, notwithstanding its best efforts, Republic has been unable to effectuate service of the subpoena, as Applicant has refused to voluntarily accept

¹ Mr. Brooks' international travel made him unavailable to give trial testimony during Republic's testimony period that ended on October 14, 2015. Then, after agreeing to provide his trial testimony on November 20, 2015, and stipulating to the extension of Republic's testimony period to extend to December 13, 2015, he again made plans to be out of the country and unilaterally cancelled his deposition.

² Although the Interlocutory Attorney exercised his discretion to rule on Republic's motion prior to the time in which Applicant might have filed a response, Applicant did not respond to Republic's motion, nor did it otherwise communicate with Republic regarding the motion.

service and has rendered itself unable to be served pursuant to Rules 5 and 45 of the Federal Rules of Civil Procedure.

4. Following the Interlocutory Attorney's Order of November 24, 2015, counsel for Republic contacted counsel for Applicant to reschedule Mr. Brooks' testimony on a mutually agreeable date. *See* Exhibit A to Fraker Decl. filed herewith. Republic's counsel informed Applicant's counsel that a subpoena would be served on Mr. Brooks for the rescheduled date. *Id.* Republic's counsel also inquired whether Applicant's counsel was authorized to accept service of the subpoena to be issued. *Id.* Applicant's counsel was not able to accept service of the subpoena but represented that he had left a message with Mr. Brooks' assistant and would "circle back as soon as [counsel received] some guidance from [Mr. Brooks]." *Id.*

5. With no further response from Applicant or its counsel, on December 22, 2015, pursuant to Rule 45 of the Federal Rules of Civil Procedure, counsel for Republic issued a subpoena from the District Court for the Southern District of California, the district of Applicant's residence, requiring Applicant to provide trial testimony on January 19, 2016, at Applicant's counsel's office. *See* Exhibit B to Fraker Decl. Republic's counsel sent a courtesy copy of the subpoena and a cover email to Applicant's counsel indicating that the subpoena would be served pursuant to Rules 5 and 45. *Id.*

6. However, despite Applicant's counsel's "best efforts to reach Mr. Brooks," Applicant continued its pattern of refusing to communicate with its counsel, causing its counsel to openly question his firm's continued participation in this proceeding and to request that the location of the deposition be changed from his firm's office because "we do not know what our role will be in this case a month from now." *See* Exhibit C to Fraker Decl.

7. As Applicant's counsel of record was unable or unauthorized to accept service of the subpoena, Republic proceeded to attempt to serve the subpoena pursuant to Rules 5 and 45. First, Republic attempted to deliver the subpoena to Applicant's Registered Agent, Mr. Brooks, at Applicant's address of record with California Secretary of State, namely 1 Coronado Cays Boulevard, Coronado, California 92118 ("Registered Agent Address"). *See* Exhibit D to Fraker Decl. However, as reflected in the attached Affidavit of the qualified process server retained to serve the subpoena, the Registered Agent Address does not exist. *See also* Exhibit E to Fraker Decl. Photographs taken at the intersection where the Registered Agent Address should be and images of that area of Coronado Cays Boulevard confirm that there is no such address. *See* Exhibits B and C to Lopez Affidavit. Further, the Registered Agent Address is not recognized by the ZIP Code search tool on the U.S. Post Office website. *See* Exhibit F to Fraker Decl. A U.S. Postal Service worker confirmed to the process server that there is no numbered address of "1" on Coronado Cays Boulevard. *See* Lopez Affidavit at ¶ 6.

8. Republic next attempted to serve Applicant with the subpoena at its address of record for the instant application, namely P.O. Box 181205, Coronado, California 92178. Thus, on January 8, 2016, Republic's counsel issued a second subpoena from the District of Southern California compelling Applicant to provide trial testimony at the office of Applicant's counsel on February 18, 2016. Republic's counsel sent the subpoena, along with a cover letter, via certified mail to Applicant's address of record. *See* Exhibits G and H to Fraker Decl.

10. Again, Republic provided Applicant's counsel with a courtesy copy of the subpoena and advised counsel that it was unable to effectuate service of the original subpoena at Applicant's Registered Agent Address. *See* Exhibit G to Fraker Decl. Applicant's counsel responded only that his firm's office would be unavailable for the deposition. *See* Exhibit I to

Fraker Decl. Republic's counsel replied that the location of the deposition would be changed if service of the subpoena was effectuated, and again requested that Applicant's counsel state whether he is authorized to accept service and if he had received further instruction from Mr. Brooks. *See* Exhibit J to Fraker Decl. On January 13, 2016, Applicant's counsel confirmed that he is not authorized to accept service and he had not received any communication from Mr. Brooks. *See* Exhibit K to Fraker Decl.

10. According to U.S. Postal Service records, the subpoena was delivered to Applicant's Post Office Box in Coronado, California on January 11, 2016, but delivery had not been accepted as of March 4, 2016. *See* Exhibit L to Fraker Decl.

11. To date, therefore, Republic has diligently pursued Applicant's trial testimony and has exhausted all avenues to secure Applicant's attendance at its trial deposition. Moreover, the foregoing facts show that Applicant has avoided service of Republic's subpoena by (i) providing the California Secretary of State with a false or incorrect Registered Agent Address, (ii) refusing to take delivery of certified mail sent to its address of record in the instant proceeding, and (iii) not authorizing its counsel to accept service or otherwise providing its counsel with any instructions regarding this proceeding in more than four months. Furthermore, Applicant's counsel has represented that he "does not know what [his] role will be in this case," as Mr. Brooks has not contacted Applicant's counsel or provided any instructions regarding this proceeding in more than four months. Applicant's continued refusal to participate in this proceeding confirms that Applicant does not intend to take any further action in this matter. Judgment in favor of Republic is therefore appropriate pursuant to TBMP § 527.03.

Respectfully submitted,

REPUBLIC TECHNOLOGIES (NA), LLC

By: /Antony J. McShane/
One of Its Attorneys

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Firm ID 13739

Dated: March 4, 2016

CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, hereby certify that I caused a true and correct copy of the foregoing **OPPOSER'S RENEWED MOTION FOR JUDGMENT IN ITS FAVOR** to be served upon:

Richard B. Jefferson
M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3
Los Angeles, CA 90036

via U.S. Mail, with a courtesy copy sent via email, on the date noted below:

Date: March 4, 2016

By: /Andrew S. Fraker/
One of the Attorneys for Republic Technologies,
Republic Technologies (NA), LLC

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.
85/551,808 for S.O.B.

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REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

Opposition No. 91212024

DECLARATION OF ANDREW S. FRAKER

I, Andrew S. Fraker, the undersigned Declarant, am an attorney at Neal, Gerber & Eisenberg LLP, and counsel for Republic Technologies (NA), LLC (“Republic Technologies”), the Plaintiff in the above-captioned case. I have personal knowledge of the facts set forth herein and could competently testify about these facts if called upon to do so.

1. Attached hereto as Exhibit A is a true and correct copy of an email I sent to Applicant’s counsel on December 15, 2015, and Applicant’s counsel’s response thereto sent on December 16, 2015.

2. Attached hereto as Exhibit B is a true and correct copy of the subpoena I instructed my colleague to have served on Applicant at the address of Applicant’s registered agent and a true and correct copy of an email I sent to Applicant’s counsel on December 22, 2015.

3. Attached hereto as Exhibit C is a true and correct copy of an email I received from Applicant's counsel on December 22, 2015.

4. Attached hereto as Exhibit D is a true and correct printout from the California Secretary of State's website showing the address of Applicant's Registered Agent for service.

5. Attached hereto as Exhibit E is a true and correct copy of an email from Kerri Ruswick of It's Your Serve, Inc., sent on December 24, 2015 and forwarded to me that same day.

6. Attached hereto as Exhibit F is a true and correct printout from the U.S. Postal Service website showing the results of a search for 1 Coronado Cays Boulevard, Coronado, California in the USPS ZIP Code search tool.

7. Attached hereto as Exhibit G is a true and correct copy of an email I sent to Applicant's counsel on January 8, 2016, and attachments thereto comprising the subpoena and cover letter I caused to be sent to Applicant's address of record on its application on January 8, 2016.

8. Attached hereto as Exhibit H is a true and correct copy of the U.S. Postal Service receipt for the subpoena and cover letter shown in Exhibit F hereto, sent by certified mail on January 8, 2016.

9. Attached hereto as Exhibit I is a true and correct copy of an email I received from Applicant's counsel on January 9, 2016.

10. Attached hereto as Exhibit J is a true and correct copy of an email I sent to Applicant's counsel on January 13, 2016.

11. Attached hereto as Exhibit K is a true and correct copy of an email I received from Applicant's counsel on January 13, 2016.

12. Attached hereto as Exhibit L is a true and correct printout from the U.S. Postal Service website on March 4, 2016, showing tracking information for the subpoena and cover letter sent by certified mail on January 8, 2016.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on March 4, 2016.

By: 
Andrew S. Fraker

Exhibit A

Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Wednesday, December 16, 2015 2:39 PM
To: Fraker, Andrew S.
Subject: Re: Deposition date

Andrew,

I left a message with Mr. Brook's assistant. I'll circle back as soon as I get some direction from him.

Best, Richard



Richard B. Jefferson, Esq.,
Founding Partner
M.E.T.A.L. Law Group, LLP
SAG-AFTRA Plaza
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w: www.metallawgroup.com
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NOTICE: This electronic mail transmission, and any documents, files or previous electronic messages attached to it may contain confidential information that is legally privileged. It is covered by the Electronic Communication Privacy Act, U.S.C. Sections 2510 - 2521. If you are not the addressee or intended recipient of this electronic mail transmission, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please delete the original transmission and its attachments and destroy any printed copies hereof. Thank you for your cooperation. If this is regarding a client matter, nothing contained in or omitted from this email shall be deemed a waiver of any rights or remedies with respect to the subject matter herein, and we expressly reserve all of our client's rights and remedies. If this is communication with a client it shall be considered privileged attorney-client communication that is not admissible in any legal proceeding.

On Tue, Dec 15, 2015 at 12:45 PM, Fraker, Andrew S. <afraaker@ngelaw.com> wrote:

Richard,

We are still hopeful that we will be able to find a mutually agreeable date for Mr. Brooks' deposition. Please let us know if you have received any further instructions from Mr. Brooks and if there is a date in the near future that will be convenient for both of you for the deposition. Once we have that date we will prepare and serve a subpoena. In that regard, please let us know if you are authorized to accept service of the subpoena, or if we should have it served on Mr. Brooks personally. We would appreciate hearing from you by the end of this week.

Best regards,

Andrew

Andrew S. Fraker

Attorney at Law

NEAL • GERBER • EISENBERG

Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
312.269.5280 phone • 312.429.3588 fax

afraker@ngelaw.com • www.ngelaw.com

Please consider the environment before printing this email.

Confidentiality Notice: This communication is confidential and may contain privileged information. If you have received it in error, please notify the sender by reply e-mail and immediately delete it and any attachments without copying or further transmitting the same.

Exhibit B

Fraker, Andrew S.

From: Fraker, Andrew S.
Sent: Tuesday, December 22, 2015 4:18 PM
To: 'Richard Jefferson'
Cc: McShane, Antony J.
Subject: Brooks Entertainment deposition subpoena
Attachments: Letter from Andrew Fraker to Scott dated 12-22-15.pdf; Brooks Entertainment Subpoena.pdf

Richard,

It is our understanding that you have been unable to respond to our renewed request for potential deposition dates because you have not received guidance from Mr. Brooks. Accordingly, to protect our client's rights and attempt to move the proceedings forward, we have prepared and will serve the attached subpoena for the trial testimony of Brooks Entertainment, Inc., along with a revised Notice of Deposition. The documents reflect a date (January 19, 2016) that is convenient for us, although we remain willing to work with you to find a mutually agreeable date in the near future. You have not indicated that you are authorized to accept service on behalf of Brooks Entertainment, so we will attempt service on Mr. Brooks personally at Brooks Entertainment's address of record with the California Secretary of State. Please let us know if you have any further instructions from Mr. Brooks.

Best regards,
Andrew

Andrew S. Fraker
Attorney at Law
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Please consider the environment before printing this email.

Confidentiality Notice: This communication is confidential and may contain privileged information. If you have received it in error, please notify the sender by reply e-mail and immediately delete it and any attachments without copying or further transmitting the same.

December 22, 2015

VIA EMAIL (SJOHNSON@NGELAW.COM)

**Re: Service of Subpoena - Republic Technologies v.
Brooks Entertainment, TTAB Opposition No. 91212024**

Dear Scott:

Please effect service of the attached documents on Brooks Entertainment, Inc. at the following address:

1 Coronado Cays Boulevard, Coronado, California 92118.

Very truly yours,



Andrew S. Fraker

ASF

22262170.1

UNITED STATES DISTRICT COURT

for the

Southern District of California

Republic Technologies (NA), LLC

Plaintiff

v.

Brooks Entertainment, Inc.

Defendant

Civil Action No. TTAB Opp. No. 91212024

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Brooks Entertainment, Inc., 1 Coronado Cays Blvd., Coronado, California 92118

(Name of person to whom this subpoena is directed)

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See attached Notice of Testimony Deposition

Place: M.E.T.A.L. Law Group, LLP
5757 Wilshire Blvd., PH3
Los Angeles, California 90036

Date and Time:
01/19/2016 10:00 am

The deposition will be recorded by this method: Written transcript

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/22/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Republic Technologies (NA), LLC

, who issues or requests this subpoena, are:

Antony J. McShane; 2 N. LaSalle St., Suite 1700 Chicago, IL 60602; amcshane@ngelaw.com; (312) 269-8000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. TTAB Opp. No. 91212024

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

REPUBLIC TECHNOLOGIES (NA), LLC

Opposer,

v.

BROOKS ENTERTAINMENT, INC.

Applicant.

Opposition No. 91212024

Mark: S.O.B

Serial No.: 85/551,808

Notice of Testimony Deposition of Brooks Entertainment, Inc.

Please take notice that, on January 19, 2016, beginning at 10:00 a.m., pursuant to 37 C.F.R. § 2.123(a), Opposer, Republic Technologies (NA), LLC ("Republic Technologies"), will take the testimony deposition of Applicant Brooks Entertainment, Inc., which will be asked to testify on the following matters:

- (a) development and history of the S.O.B mark;
- (b) the goods offered or sold under or in connection with the S.O.B mark;
- (c) importation to the United States of goods bearing the S.O.B mark;
- (d) sales in intrastate and interstate commerce of goods under and in connection with the S.O.B mark;
- (e) channels of trade of the goods distributed and sold under and in connection with the S.O.B mark in the United States;
- (f) consumers and intended consumers of goods distributed and sold under and in connection with the S.O.B mark;
- (g) the manner in which the goods sold under and in connection with the S.O.B mark are promoted, advertised and marketed;
- (h) production of goods bearing the S.O.B mark in the Dominican Republic;

- (i) Brooks Entertainment's business establishment in the Dominican Republic, including facilities and personnel;
- (j) Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (k) Brooks Entertainment's application to register the S.O.B mark in the United States.

Brooks Entertainment will also be asked to provide testimony about:

- (1) Documents relating to the importation to the United States of goods bearing the S.O.B mark;
- (2) Documents relating to sales in intrastate and interstate commerce of goods bearing the S.O.B mark;
- (3) Documents relating to the promotion, advertisement and marketing of goods under and in connection with the S.O.B mark;
- (4) Documents relating to the production of goods bearing the S.O.B mark in the Dominican Republic
- (5) Documents relating to Brooks Entertainment's business establishment in the Dominican Republic;
- (6) Documents relating to Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (7) Documents relating to Brooks Entertainment's application to register the S.O.B mark in the United States.

The noticed deposition will take place before an officer having the power to administer oaths under the law at the offices of the M.E.T.A.L. Law Group, LLP at 5757 Wilshire Boulevard, Penthouse Three, Los Angeles, California 90036.

Dated: December 22, 2015

/s/ Antony J. McShane

One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, state that I served a copy of *Notice of Testimony*
Deposition of Brooks Entertainment, Inc. upon counsel for Applicant:

Richard Jefferson, Esq.
METAL Law Group LLP
5757 Wilshire Boulevard, PH3
Museum Square
Los Angeles, California 90036

via First Class U.S. Mail, with a courtesy copy via email, on this 22nd day of December, 2015.

/Andrew S. Fraker/
Andrew S. Fraker

22261677.1

Exhibit C

Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Tuesday, December 22, 2015 4:29 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Brooks Entertainment deposition subpoena

Hello Andrew,

We will continue to use our best efforts to reach Mr. Brooks.

Please revise the subpoena and schedule the deposition somewhere other than our office as we do not know what our role will be in this case a month from now.

Kind regards.

Richard

=====



Richard B. Jefferson, Esq.,
Founding Partner
M.E.T.A.L. Law Group, LLP
SAG-AFTRA Plaza
5757 Wilshire Boulevard, Penthouse 3
Los Angeles, California 90036
p: 323.289.2260, x 102
f: 323.289.2261
w: www.metallawgroup.com
e: rjefferson@metallawgroup.com

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On Tue, Dec 22, 2015 at 2:17 PM, Fraker, Andrew S. <afraker@ngelaw.com> wrote:

Richard,

It is our understanding that you have been unable to respond to our renewed request for potential deposition dates because you have not received guidance from Mr. Brooks. Accordingly, to protect our client's rights and attempt to move the proceedings forward, we have prepared and will serve the attached subpoena for the trial testimony of Brooks Entertainment, Inc., along with a revised Notice of Deposition. The documents reflect a date (January 19, 2016) that is convenient for us, although we remain willing to work with you to find a mutually agreeable date in the near future. You have not indicated that you are authorized to accept service on behalf of Brooks Entertainment, so we will attempt service on Mr. Brooks personally at Brooks Entertainment's address of record with the California Secretary of State. Please let us know if you have any further instructions from Mr. Brooks.

Best regards,

Andrew

Andrew S. Fraker

Attorney at Law

NEAL • GERBER • EISENBERG

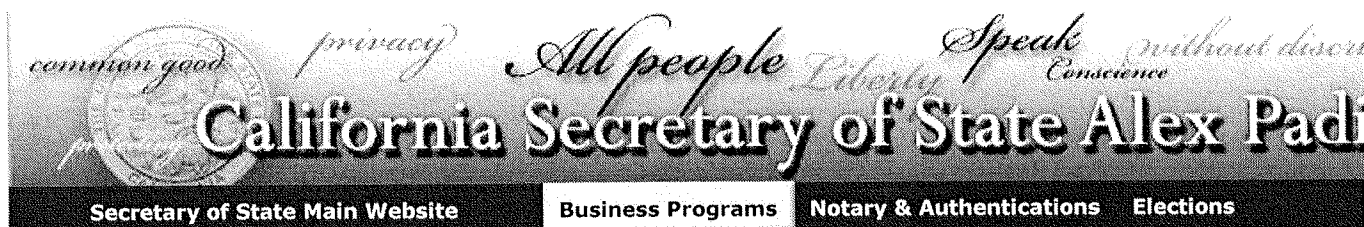
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
312.269.5280 phone • 312.429.3588 fax

afraker@ngelaw.com • www.ngelaw.com

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Exhibit D


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Business Entities (BE)

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- [Processing Times](#)
- [Disclosure Search](#)

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- [Starting A Business](#)

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- [Business Identity Theft](#)
- [Misleading Business Solicitations](#)

Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, February 16, 2016. Please refer to **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	BROOKS ENTERTAINMENT, INC.
Entity Number:	C2290304
Date Filed:	07/09/2002
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	PO BOX 181205
Entity City, State, Zip:	CORONADO CA 92178
Agent for Service of Process:	FRAN S BROOKS
Agent Address:	1 CORONADO CAYS BLVD
Agent City, State, Zip:	CORONADO CA 92118

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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Exhibit E

Fraker, Andrew S.

From: Johnson, R.K. Scott
Sent: Thursday, December 24, 2015 10:34 AM
To: Fraker, Andrew S.
Cc: DocketMail
Subject: FW: Service in San Diego

See below for service information on Brooks Entertainment, San Diego

R. K. Scott Johnson
Docket Specialist
(312) 269-8058

Please consider the environment before printing this email

How are we doing? Click [here](#) to leave us feedback.

From: Kerri Ruswick [mailto:kerri@iys.us]
Sent: Thursday, December 24, 2015 10:29 AM
To: Johnson, R.K. Scott
Subject: RE: Service in San Diego

Scott,

Brooks Entertainment Inc. c/o Fran Shon Brooks – 1 Coronado Cays Blvd., Coronado, CA – The address does not appear to exist. The server even spoke to a mailman who confirmed that there is no numbered address of 1 on Coronado Cays Blvd. Please advise on how to proceed.

Kerri

Please verify that you have received this email. Thank You! Have a Great Day!

Kerri Ruswick
It's Your Serve, Inc.
134 N. LaSalle St., Suite 750
Chicago, IL 60602
Phone: (312) 855-0303
Fax: (312) 855-0306
www.iys.us

Exhibit F

English

Customer Service

USPS Mobile

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Look Up a ZIP Code™

Still Have (...)
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Cities by ZIP Code™

You entered:

1 CORONADO CAYS BOULEVARD
CORONADO CA

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Edit and Search Again ›

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Exhibit G

Fraker, Andrew S.

From: Fraker, Andrew S.
Sent: Friday, January 08, 2016 4:52 PM
To: 'Richard Jefferson'
Cc: McShane, Antony J.
Subject: Republic Technologies (NA), LLC v. Brooks Entertainment, Inc.
Attachments: Subpoena.pdf

Richard,

We were unable to effectuate service of the subpoena on Mr. Brooks as the agent for Brooks Entertainment, Inc. at the address registered with the California Secretary of State. Accordingly, attached is our further attempt to serve the subpoena via certified mail to the post office box listed as Brooks Entertainment's address of record with the USPTO.

Please let us know if you receive any further direction from Mr. Brooks.

Best regards,
Andrew

Andrew S. Fraker
Attorney at Law
NEAL • GERBER • EISENBERG
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
312.269.5280 phone • 312.429.3588 fax
afraker@ngelaw.com • www.ngelaw.com

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January 8, 2016

VIA CERTIFIED MAIL

Fran S. Brooks
CEO
Brooks Entertainment, Inc.
P.O. Box 181205
Coronado, California 92178

**Re: Republic Technologies (NA), LLC v. Brooks Entertainment, Inc.
U.S. Trademark Opposition No. 91212024**


Dear Mr. Brooks:

Enclosed herewith, and served upon you pursuant to Rule 45(b) of the Federal Rules of Civil Procedure, is a subpoena issued by the United States District Court for the Southern District of California requiring Brooks Entertainment, Inc. to provide trial testimony in the above-referenced matter, as further explained in the accompanying Notice of Testimony. We have provided copies to your counsel of record in the matter, namely Richard B. Jefferson at 5757 Wilshire Blvd., PH3, Museum Square, Los Angeles, California 90036.

As required by Rule 45(b)(1), also enclosed is a check payable to Brooks Entertainment in the amount of \$198.47, for the one-day witness fee of \$40.00 plus \$158.47 in mileage reimbursement for travel between the address of record for Brooks Entertainment, Inc. and the place where your testimony will be taken, namely Mr. Jefferson's office.

Please contact your counsel if you have any questions or concerns.

Very truly yours,



Andrew S. Fraker

ASF

cc: Richard B. Jefferson, Esq.

Enclosure

22355216.3

UNITED STATES DISTRICT COURT

for the

Southern District of California

Republic Technologies (NA), LLC

Plaintiff

v.

Brooks Entertainment, Inc.

Defendant

Civil Action No. TTAB Opp. No. 91212024

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Brooks Entertainment, Inc., 1 Coronado Cays Blvd., Coronado, California 92118

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See attached Notice of Testimony Deposition and Exhibit A thereto

Place: M.E.T.A.L. Law Group, LLP
5757 Wilshire Blvd., PH3
Los Angeles, California 90036

Date and Time:

02/18/2016 10:00 am

The deposition will be recorded by this method: Written transcript

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/08/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Republic Technologies (NA), LLC, who issues or requests this subpoena, are:

Antony J. McShane; 2 N. LaSalle St., Suite 1700 Chicago, IL 60602; amcshane@ngelaw.com; (312) 269-8000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
 - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
 - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- (B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

REPUBLIC TECHNOLOGIES (NA), LLC

Opposer,

v.

BROOKS ENTERTAINMENT, INC.

Applicant.

Opposition No. 91212024

Mark: S.O.B

Serial No.: 85/551,808

Notice of Testimony Deposition of Brooks Entertainment, Inc.

Please take notice that, on February 18, 2016, beginning at 10:00 a.m., pursuant to 37 C.F.R. § 2.123(a), Opposer, Republic Technologies (NA), LLC (“Republic Technologies”), will take the testimony deposition of Applicant Brooks Entertainment, Inc., which will be asked to testify on the following matters:

- (a) development and history of the S.O.B mark;
- (b) the goods offered or sold under or in connection with the S.O.B mark;
- (c) importation to the United States of goods bearing the S.O.B mark;
- (d) sales in intrastate and interstate commerce of goods under and in connection with the S.O.B mark;
- (e) channels of trade of the goods distributed and sold under and in connection with the S.O.B mark in the United States;
- (f) consumers and intended consumers of goods distributed and sold under and in connection with the S.O.B mark;
- (g) the manner in which the goods sold under and in connection with the S.O.B mark are promoted, advertised and marketed;
- (h) production of goods bearing the S.O.B mark in the Dominican Republic;

- (i) Brooks Entertainment's business establishment in the Dominican Republic, including facilities and personnel;
- (j) Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (k) Brooks Entertainment's application to register the S.O.B mark in the United States.

Brooks Entertainment will also be asked to provide testimony about:

- (1) Documents relating to the importation to the United States of goods bearing the S.O.B mark;
- (2) Documents relating to sales in intrastate and interstate commerce of goods bearing the S.O.B mark;
- (3) Documents relating to the promotion, advertisement and marketing of goods under and in connection with the S.O.B mark;
- (4) Documents relating to the production of goods bearing the S.O.B mark in the Dominican Republic
- (5) Documents relating to Brooks Entertainment's business establishment in the Dominican Republic;
- (6) Documents relating to Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (7) Documents relating to Brooks Entertainment's application to register the S.O.B mark in the United States.

The noticed deposition will take place before an officer having the power to administer oaths under the law at the offices of the M.E.T.A.L. Law Group, LLP at 5757 Wilshire Boulevard, Penthouse Three, Los Angeles, California 90036.

Dated: January 8, 2016

/s/ Antony J. McShane

One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, state that I served a copy of *Notice of Testimony*
Deposition of Brooks Entertainment, Inc. upon counsel for Applicant:

Richard Jefferson, Esq.
METAL Law Group LLP
5757 Wilshire Boulevard, PH3
Museum Square
Los Angeles, California 90036

via First Class U.S. Mail, with a courtesy copy via email, on this 8th day of January, 2016.

/Andrew S. Fraker/
Andrew S. Fraker

21777271.4

BANK ONE.
JPMorgan Chase Bank, N.A.
Chicago, Illinois 60670
21/710

NEAL, GERBER & EISENBERG LLP
OPERATING ACCOUNT
TWO NORTH LA SALLE STREET CHICAGO, ILLINOIS 60602

CHECK NO. 371788

DATE
01/08/16

Valid After 90 Days
CHECK AMOUNT

PAY

ONE HUNDRED NINETY-EIGHT AND 47/100 USD

198.47

TO THE
ORDER OF

Brooks Entertainment, Inc.

REQUIRES COUNTER SIGNATURE IF OVER \$10,000

Thomas W. Von L. Moore

⑈ 371788⑈ ⑆071000013⑆

4072987⑈

Exhibit H

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Sent To
Fran S. Brooks
Street, Apt. No.,
or PO Box No. Brooks Entertainment Inc.
City, State, ZIP+4
P.O. Box 181205, Alameda, CA 94718

PS Form 3800, August 2005 See Reverse for Instructions



Exhibit I

Fraker, Andrew S.

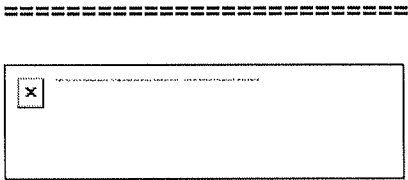
From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Saturday, January 09, 2016 3:06 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Republic Technologies (NA), LLC v. Brooks Entertainment, Inc.

Andrew,

You need to find a location for Mr. Brooks' deposition and resend. Our office is not available.

Best,

Richard



Richard B. Jefferson, Esq.,
Founding Partner
M.E.T.A.L. Law Group, LLP
SAG-AFTRA Plaza
5757 Wilshire Boulevard, Penthouse 3
Los Angeles, California 90036
p: 323.289.2260, x 102
f: 323.289.2261
w: www.metallawgroup.com
e: rjefferson@metallawgroup.com

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Exhibit J

Fraker, Andrew S.

From: Fraker, Andrew S.
Sent: Wednesday, January 13, 2016 11:50 AM
To: 'Richard Jefferson'
Cc: McShane, Antony J.
Subject: Republic Technologies (NA), LLC v. Brooks Entertainment, Inc.

Richard,

Confirming my voice mail on Monday, we will be happy to find an alternative location for Mr. Brooks' deposition if we are able to effectuate service. Please let us know if you are able to accept service, or if you have any further instruction from Mr. Brooks or any information regarding whether he intends to continue participating in the proceedings.

Best regards,
Andrew

Andrew S. Fraker
Attorney at Law
NEAL • GERBER • EISENBERG
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
312.269.5280 phone • 312.429.3588 fax
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Exhibit K

Fraker, Andrew S.

From: Richard Jefferson [richardjefferson@metallawgroup.com]
Sent: Wednesday, January 13, 2016 12:21 PM
To: Fraker, Andrew S.
Cc: McShane, Antony J.
Subject: Re: Republic Technologies (NA), LLC v. Brooks Entertainment, Inc.

Hello Andrew,

Thank you for changing the location. We have not heard back from Mr. Brooks. We are not the company's corporate counsel, we are only counsel for this particular matter, so we are not able to accept service.

Service to the company's agent for service of process is the best method.

Best, Richard

On Wed, Jan 13, 2016 at 9:49 AM, Fraker, Andrew S. <afraker@ngelaw.com> wrote:

Richard,

Confirming my voice mail on Monday, we will be happy to find an alternative location for Mr. Brooks' deposition if we are able to effectuate service. Please let us know if you are able to accept service, or if you have any further instruction from Mr. Brooks or any information regarding whether he intends to continue participating in the proceedings.

Best regards,

Andrew

Andrew S. Fraker

Attorney at Law

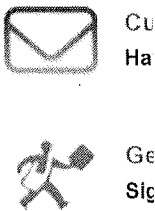
NEAL • GERBER • EISENBERG

Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700

Exhibit L



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Updated Delivery Day: Monday, January 11, 2016

In-Tra

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Available

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Features:
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DATE & TIME	STATUS OF ITEM	LOCATION
February 16, 2016 , 4:59 pm	Notice Left (No Authorized Recipient Available)	CORONADO, CA 92178

We attempted to deliver your item at 4:59 pm on February 16, 2016 in CORONADO, CA 92178 and a notice was left because an authorized recipient was not available. You may arrange redelivery by using the Schedule a Redelivery feature on this page or calling 800-ASK-USPS, or may pick up the item at the Post Office indicated on the notice. If this item is unclaimed by January 26, 2016 then it will be returned to sender.

January 11, 2016 , 6:58 am	Available for Pickup	CORONADO, CA 92178
January 11, 2016 , 6:56 am	Arrived at Unit	CORONADO, CA 92118
January 11, 2016 , 1:17 am	Departed USPS Facility	SAN DIEGO, CA 92199
January 10, 2016 , 2:05 pm	Arrived at USPS Facility	SAN DIEGO, CA 92199
January 9, 2016 , 5:58 am	Departed USPS Facility	BEDFORD PARK, IL 60499
January 9, 2016 , 12:25 am	Arrived at USPS Facility	BEDFORD PARK, IL 60499

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.
85/551,808 for S.O.B.

Published in the Official Gazette
on July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

Opposition No. 91212024

AFFIDAVIT OF JESUS LOPEZ

1. I, Jesus Lopez, am an agent of It's Your Serve, Inc. of 134 N. LaSalle Street, Chicago, Illinois 60602. I have been so employed since 07-14-14. My duties include service of process and other legal documents. I make the statements in this affidavit based upon my own personal knowledge, and certify under oath that the statements in this affidavit are true to the best of my knowledge, information, and belief.

2. On December 22, 2015, I was instructed to attempt service of the subpoena attached hereto as Exhibit A on Brooks Entertainment, Inc. at the address of 1 Coronado Cays Boulevard, Coronado, California, 92178 (the "Address").

3. I attempted to serve the subpoena but was unable to do so because I was not able to locate a building bearing the Address. In fact, there are no buildings facing onto Coronado Cays Boulevard at the intersection where the Address is purportedly located. The photographs

attached hereto as Exhibit B fairly and accurately represent the intersection of the purported location of the Address at the time at which I attempted service.

4. The image attached hereto as Exhibit C, taken from Google Earth,¹ fairly and accurately represents the street view from the purported location of the Address, looking down Coronado Cays Boulevard, at the time at which I attempted service. As shown, this stretch of Coronado Cays Boulevard does not have street-facing buildings.

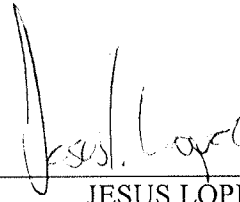
5. The map attached hereto as Exhibit D fairly and accurately represents the purported location of the Address and does not show a plot with the number 1 on Coronado Cays Boulevard.

6. After attempting service, on December 22, 2015, I spoke to a U.S. Postal Service worker who confirmed that there is no numbered address of 1 on Coronado Cays Boulevard in Coronado, California.

7. Accordingly, I concluded that it would be impossible to serve the subpoena at 1 Coronado Cays Boulevard, Coronado, California, 92178, because such address does not exist. Therefore, on December 22, 2015, I returned the subpoena to my supervisor unserved.

¹ https://www.google.com/maps/place/1+Coronado+Cays+Blvd,+Coronado,+CA+92118/@32.6229013,-117.1343174,3a,75y,18.95h,80.93t/data=!3m7!1e1!3m5!1sIb9TD-7aegz-kfDMUfKPKA!2e0!6s%2F%2Fgeo1.ggpht.com%2Fcbk%3Fpanoid%3DIb9TD-7aegz-kfDMUfKPKA%26output%3Dthumbnail%26cb_client%3Dsearch.TACTILE.gps%26thumb%3D2%26w%3D392%26h%3D106%26yaw%3D46.737904%26pitch%3D0!7i13312!8i6656!4m5!1m2!2m1!1s1+Coronado+Cays+Boulevard,+Coronado,+CA!3m1!1s0x80d94d7114aa8133:0x74b4dab8657c9b3e!6m1!1e1

By:



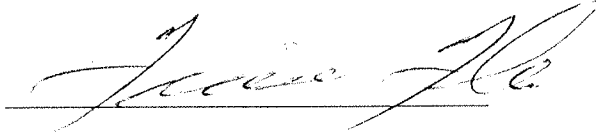
JESUS LOPEZ

SUBSCRIBED AND SWORN TO

Before me this 1st day of

~~February~~, 2016.

March



Notary Public

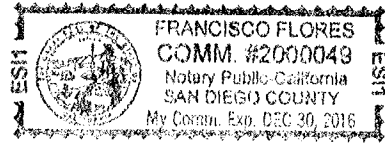


Exhibit A

UNITED STATES DISTRICT COURT

for the

Southern District of California

Republic Technologies (NA), LLC

Plaintiff

v.

Brooks Entertainment, Inc.

Defendant

Civil Action No. TTAB Opp. No. 91212024

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Brooks Entertainment, Inc., 1 Coronado Cays Blvd., Coronado, California 92118

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See attached Notice of Testimony Deposition

Place: M.E.T.A.L. Law Group, LLP
5757 Wilshire Blvd., PH3
Los Angeles, California 90036

Date and Time:
01/19/2016 10:00 am

The deposition will be recorded by this method: Written transcript

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/22/2015

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Republic Technologies (NA), LLC, who issues or requests this subpoena, are:

Antony J. McShane; 2 N. LaSalle St., Suite 1700 Chicago, IL 60602; amcshane@ngelaw.com; (312) 269-8000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. TTAB Opp. No. 91212024

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

- (A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- (B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
 - (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
 - (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
 - (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
 - (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- (B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
 - (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
 - (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

- (A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- (B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.
- (D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

- (A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
 - (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

REPUBLIC TECHNOLOGIES (NA), LLC

Opposer,

v.

BROOKS ENTERTAINMENT, INC.

Applicant.

Opposition No. 91212024

Mark: S.O.B

Serial No.: 85/551,808

Notice of Testimony Deposition of Brooks Entertainment, Inc.

Please take notice that, on January 19, 2016, beginning at 10:00 a.m., pursuant to 37 C.F.R. § 2.123(a), Opposer, Republic Technologies (NA), LLC ("Republic Technologies"), will take the testimony deposition of Applicant Brooks Entertainment, Inc., which will be asked to testify on the following matters:

- (a) development and history of the S.O.B mark;
- (b) the goods offered or sold under or in connection with the S.O.B mark;
- (c) importation to the United States of goods bearing the S.O.B mark;
- (d) sales in intrastate and interstate commerce of goods under and in connection with the S.O.B mark;
- (e) channels of trade of the goods distributed and sold under and in connection with the S.O.B mark in the United States;
- (f) consumers and intended consumers of goods distributed and sold under and in connection with the S.O.B mark;
- (g) the manner in which the goods sold under and in connection with the S.O.B mark are promoted, advertised and marketed;
- (h) production of goods bearing the S.O.B mark in the Dominican Republic;

- (i) Brooks Entertainment's business establishment in the Dominican Republic, including facilities and personnel;
- (j) Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (k) Brooks Entertainment's application to register the S.O.B mark in the United States.

Brooks Entertainment will also be asked to provide testimony about:

- (1) Documents relating to the importation to the United States of goods bearing the S.O.B mark;
- (2) Documents relating to sales in intrastate and interstate commerce of goods bearing the S.O.B mark;
- (3) Documents relating to the promotion, advertisement and marketing of goods under and in connection with the S.O.B mark;
- (4) Documents relating to the production of goods bearing the S.O.B mark in the Dominican Republic
- (5) Documents relating to Brooks Entertainment's business establishment in the Dominican Republic;
- (6) Documents relating to Brooks Entertainment's registration of the S.O.B mark in the Dominican Republic; and
- (7) Documents relating to Brooks Entertainment's application to register the S.O.B mark in the United States.

The noticed deposition will take place before an officer having the power to administer oaths under the law at the offices of the M.E.T.A.L. Law Group, LLP at 5757 Wilshire Boulevard, Penthouse Three, Los Angeles, California 90036.

Dated: December 22, 2015

/s/ Antony J. McShane

One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, state that I served a copy of *Notice of Testimony*
Deposition of Brooks Entertainment, Inc. upon counsel for Applicant:

Richard Jefferson, Esq.
METAL Law Group LLP
5757 Wilshire Boulevard, PH3
Museum Square
Los Angeles, California 90036

via First Class U.S. Mail, with a courtesy copy via email, on this 22nd day of December, 2015.

/Andrew S. Fraker/
Andrew S. Fraker

22261677.1

Exhibit B





Exhibit C

Google Maps Coronado Cays Blvd



Image capture: Jan 2011 © 2016 Google

Coronado, California

Street View - Jan 2011

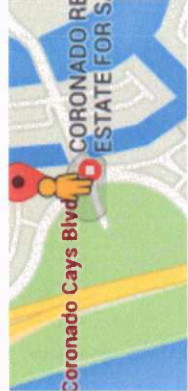
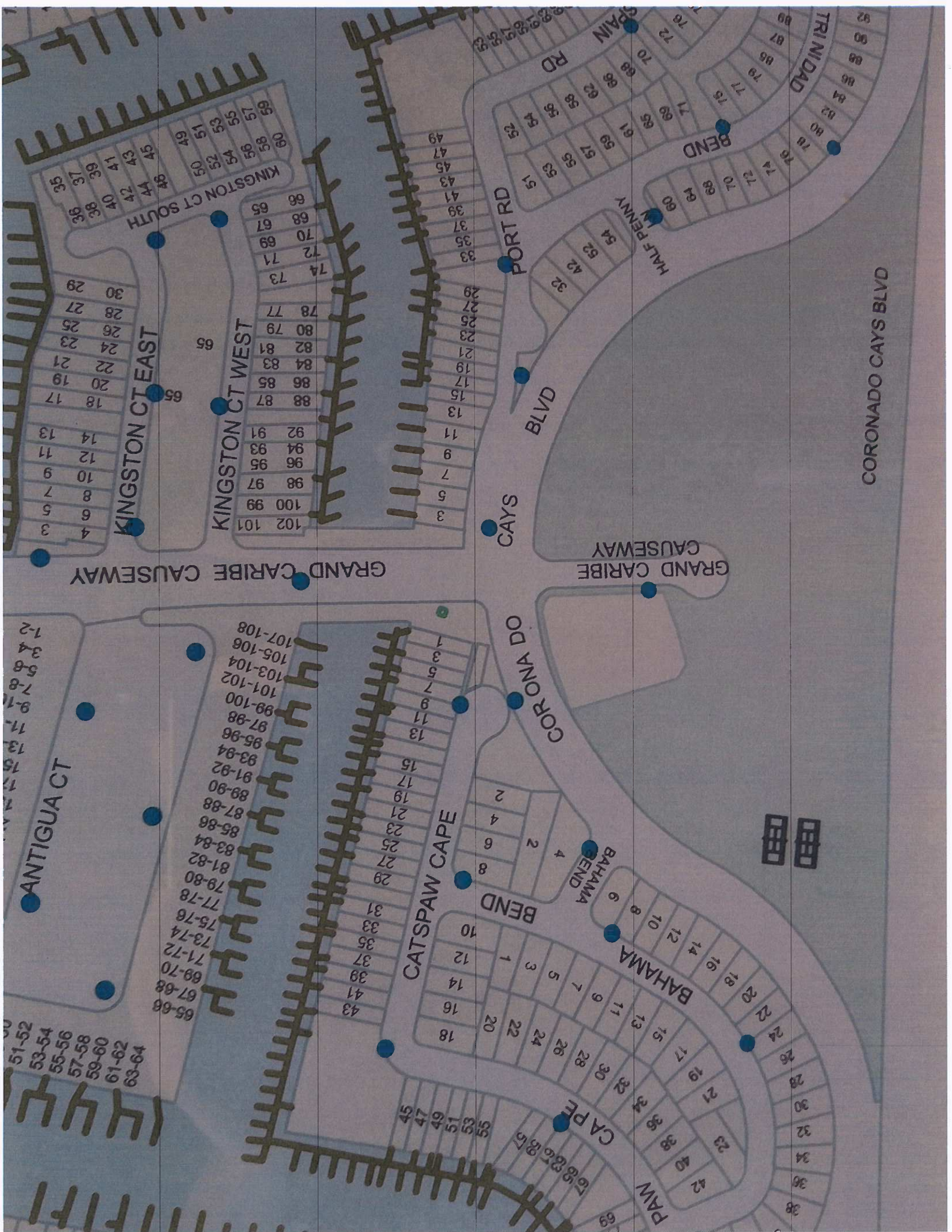


Exhibit D



CORONADO CAYS BLVD

TRINIDAD

BEND

HALF PENNY

PORT RD

CAYS

BLVD

GRAND CARIBE CAUSEWAY

CORONA DO

BAHAMA BEND

BEND

BAHAMA

CAPE

CATSPAW CAPE

KINGSTON CT EAST

KINGSTON CT WEST

KINGSTON CT SOUTH

GRAND CARIBE CAUSEWAY

ANTIGUA CT